

1 communication network by which information concerning the Celebrex Enterprise is exchanged on
2 a regular basis. Typically this communication occurs by the use of electronic mail or the telephone
3 in which Defendants plan the operation of the Celebrex Enterprise alleged herein and ran its
4 continuing operation. This communication also occurred at meetings of the sales departments of
5 each Defendant.

6 237. As part of their conduct of the Celebrex Enterprise and as part of the Enterprise's
7 decisional marketing structure, Defendants agreed to maintain close communications between
8 scientists at each company who were studying safety, agreed to control media access to safety news
9 and to provide each company's sales force with an agreed response to safety issues.

10 238. In violation of Section 1962(c) of RICO, each Defendant conducted the affairs of
11 the Celebrex Enterprise with which they associated by reporting fraudulent, false, deceptive and/or
12 incomplete information as to the safety of Celebrex that were then disseminated nationwide.

13 **Defendants' Pattern of Racketeering Activity**

14 239. Each Defendant conducted and participated in the affairs of the Celebrex Enterprise
15 through a pattern of racketeering activity, including acts that are indictable under 18 U.S.C. § 1341,
16 relating to mail fraud, and 18 U.S.C. § 1343, relating to wire fraud. Defendants' pattern of
17 racketeering likely involved thousands, if not hundreds of thousands, of separate instances of use of
18 the U.S. mails or interstate wire facilities in furtherance of their Celebrex Enterprise. Each of these
19 fraudulent mailings and interstate wire transmissions constitutes a "racketeering activity" within
20 the meaning of 18 U.S.C. § 1961(1)(B). Collectively, these violations constitute a "pattern of
21 racketeering activity," within the meaning of 18 U.S.C. § 1961(5), by means of which Defendants
22 intended to defraud Plaintiffs, members of the Class and other intended victims of the Celebrex
23 Enterprise.

24 240. Defendants' fraudulent and unlawful Celebrex Enterprise consisted, in part, of
25 disseminating by means of the U.S. mails and interstate wire facilities fraudulent information as to
26 the safety and superiority of Celebrex. As a result, Defendants engaged in a fraudulent and
27 unlawful course of conduct constituting a pattern of racketeering activity.

28 516090.1

1 241. Defendants' racketeering activities amounted to a common course of conduct, with
2 similar pattern and purpose, intended to deceive Plaintiffs and members of the Class. Each
3 separate use of the U.S. mails and/or interstate wire facilities employed by Defendants was related,
4 had similar intended purposes, involved similar participants and methods of execution, and had the
5 same results affecting the same victims, including Plaintiffs and members of the Class. Each
6 Defendant has engaged in the pattern of racketeering activity for the purpose of conducting the
7 ongoing business affairs of the Celebrex Enterprise.

8 **Defendants' Motive**

9 242. Defendants' motive in creating and operating the Celebrex Enterprise and
10 conducting the affairs of the Celebrex Enterprise described herein was to fraudulently obtain sales
11 and profits.

12 243. The Celebrex Enterprise was designed to, and did, encourage others, including
13 health care providers, to advocate the use of Celebrex. Thus, each Defendant used the Celebrex
14 Enterprise to sell more Celebrex, thereby fraudulently gaining sales and market share and profits.

15 **Damages Caused by Defendants' Enterprise**

16 244. Defendants' violations of federal law and their pattern of racketeering activity have
17 directly and proximately caused Plaintiffs and members of the Class to be injured in their business
18 or property because Plaintiffs and members of the Class have paid billions of dollars in
19 overpayment for Celebrex.

20 245. Through the use of the RICO enterprise, Defendants engaged in a pattern of
21 racketeering activity including at least multiple episodes of mail fraud and wire fraud. Consumers
22 and third party payors were injured in their property by reason of these violations, by, among other
23 things, having to pay hundreds of millions of dollars for Celebrex by reason of the unlawful
24 conduct.... Defendants and their co-conspirators engaged in numerous overt predicate fraudulent
25 racketeering acts in furtherance of the conspiracy, and by reason of this conduct consumers and
26 third party payors were injured in their property.

246. Defendants' use of the mails and wires to perpetrate its fraud involved thousands of communications, including but not limited to: communications with health insurers and patients, including Plaintiffs, inducing payments for Celebrex to be made based on misrepresentations concerning the safety, efficacy, and usefulness of Celebrex.

247. Defendants' fraudulent scheme consisted of, inter alia: deliberately misrepresenting the uses for which Celebrex was safe and effective so that Plaintiffs and members of the Class paid for this drug to treat symptoms for which it was not scientifically proven to be safe and effective and actively concealing and causing others to conceal, information about the true safety and efficacy of Celebrex.

248. Plaintiffs and members of the Class have been injured in their business and property by reason of these violations in that Plaintiffs and the members of the Class have made hundreds of millions of dollars in payment for Celebrex that they would not have made had Defendants not engaged in its pattern of racketeering activity. By reason of the unlawful acts engaged in by Defendants, Plaintiffs and the Class have suffered ascertainable loss of damages.

249. Plaintiffs' harm is caused by an indivisible course of conduct. It is impossible to segregate the cumulative and compounding effect of Defendants' multi-faceted wrongful conduct in creating the artificial demand for Celebrex as well as its price inflation. The intent of Defendants' conduct was to have the multi-faceted nature of its conduct increase demand for Celebrex and inflate its price.

250. Under the provisions of Section 1964(c) of RICO, Defendants are jointly and severally liable to Plaintiffs and members of the Class for three times the damages that Plaintiffs and the Class Members have sustained, plus the costs of bringing this suit, including reasonable attorneys' fees.

SECOND CLAIM FOR RELIEF
(Violation of the State Consumer Protection Laws)

251. Plaintiffs incorporate by reference the preceding paragraphs as if they were fully set forth herein.

1 252. Defendants had a statutory duty to refrain from unfair or deceptive acts or practices
2 in the manufacture, promotion, and sale of Celebrex to Plaintiffs and the proposed Class Members.

3 253. As a proximate result of the Defendants' misrepresentations, Plaintiffs and the
4 proposed Class Members have suffered an ascertainable loss, in an amount to be determined at
5 trial.

6 254. Defendants intended that Plaintiffs and Class Members rely on their materially
7 deceptive practices and purchase Celebrex as a consequence of the deceptive practices, including
8 Defendants' misrepresentations and omissions of material fact with respect to the true nature of
9 Celebrex:

10 a. Defendants' promotions of Celebrex as a safe drug for the treatment of pain
11 and as having fewer side effects than comparable drugs on the market were deceptive,
12 unfair, and unlawful in that Celebrex actually had an undisclosed risk of adverse
13 cardiovascular events, did not have added benefits over NSAIDs, and was promoted solely
14 for financial reasons and not due to any material increase in medical safety or efficacy over
15 NSAIDs;

16 b. Defendants' conduct was unfair, unlawful, and deceptive in that Defendants
17 knew Celebrex was unsafe and increased the risk of adverse cardiovascular events, such as
18 heart attack and stroke, to unacceptable levels, but omitted to disclose these facts to doctors
19 and patients until 2005;

20 c. Defendants' conduct was unfair, unlawful and deceptive by virtue of their
21 manipulation of data in an effort to show that Celebrex was associated with a lower
22 incidence of serious upper GI events when compared to NSAIDs when this was not true.

23 d. Defendants' conduct was unfair, unlawful, and deceptive in that they failed
24 to adequately disclose that no long term clinical trials have been conducted comparing
25 valdecoxib to either placebo or non-selective NSAIDs, and that two short term trials of
26 patients provided valdecoxib after coronary artery bypass graft ("CABG") surgery should
27
28

1 have a two-fold increased risk of serious adverse cardiovascular events compared to a
2 placebo.

3 e. Defendants' conduct was unfair, unlawful, and deceptive in that they
4 suppressed, manipulated, and concealed information that would demonstrate Celebrex was
5 not superior to NSAIDs in the majority of patients;

6 f. Defendants portrayed Celebrex as a relief for symptoms and diseases
7 without any statistically significant evidence for doing so;

8 g. Defendants omitted material information known to them in order to induce
9 doctors to prescribe Celebrex and consumers to purchase Celebrex at a price that exceeded
10 its actual worth;

11 h. Defendants established Celebrex as a standard course of treatment based
12 upon the use of reprints of articles appearing in prestigious medical journals which
13 Defendants knew were false and/or misleading; and

14 i. Defendants committed unlawful acts by promoting and advertising Celebrex
15 in a manner that violated the Federal Food, Drug, and Cosmetic Act. See 21 U.S.C.
16 §§ 331(a) and (b), 352(a), (f), and (n) and 355(a).

17 255. Defendants' actions, as complained of herein, constitute unfair competition or
18 unfair, unconscionable, deceptive or fraudulent acts or practices in violation of various state
19 consumer protection statutes that allow third-party payors to bring claims. Plaintiffs assert this
20 claim on behalf of third-party payors located in the states that permit TPP claims under the
21 consumer protection laws as set forth below.

22 (a) Defendants have engaged in unfair competition or unfair or deceptive acts or
23 practices in violation of Alaska Stat. Code § 40.50.471, *et seq.*;

24 (b) Defendants have engaged in unfair competition or unfair or deceptive acts or
25 practices in violation of Ariz. Rev. Stat. § 44-1522, *et seq.*;

1 (c) Defendants have engaged in unfair competition or unfair or deceptive acts or
2 practices in violation of Ark. Code § 4-88-101, *et seq.*, including § 4-88-113(f), and
3 § 4-8-102(5);

4 (d) Defendants have engaged in unfair competition or unfair or deceptive acts or
5 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* and the Consumer Legal
6 Remedies Act, Civ. Code § 1750 *et seq.* ("CLRA");

7 (e) Defendants have engaged in unfair competition or unfair or deceptive acts or
8 practices in violation of Colo. Rev. Stat. § 6-1-105, *et seq.*, including § 6-1-113(1)(c) and
9 § 6-1-102(b);

10 (f) Defendants have engaged in unfair competition or unfair or deceptive acts or
11 practices in violation of Conn. Gen. Stat. § 42-110b, *et seq.*, including § 42-110(a)(3);

12 (g) Defendants have engaged in unfair competition or unfair or deceptive acts or
13 practices in violation of 6 Del. Code § 2511, *et seq.*, including 6 Del. Code § 2512;

14 (h) Defendants have engaged in unfair competition or unfair or deceptive acts or
15 practices in violation of D.C. Code § 28-3901, *et seq.*, including § 28-390(1);

16 (i) Defendants have engaged in unfair competition or unfair or deceptive acts or
17 practices in violation of Fla. Stat. § 501.201, *et seq.*;

18 (j) Defendants have engaged in unfair competition or unfair or deceptive acts or
19 practices in violation of Haw. Rev. Stat. § 480, *et seq.*, including § 481A-2;

20 (k) Defendants have engaged in unfair competition or unfair or deceptive acts or
21 practices in violation of Idaho Code § 48-601, *et seq.*, including § 48-602;

22 (l) Defendants have engaged in unfair competition or unfair or deceptive acts or
23 practices in violation of 815 ILCS § 505/1, *et seq.*;

24 (m) Defendants have engaged in unfair competition or unfair or deceptive acts or
25 practices in violation of Md. Com. Law Code § 13-101, *et seq.*, including § 13-101(h);

26 (n) Defendants have engaged in unfair competition or unfair or deceptive acts or
27 practices in violation of Mass. Gen. L. Ch. 93A, *et seq.*;

28 516090.1

1 (o) Defendants have engaged in unfair competition or unfair or deceptive acts or
2 practices in violation of Mich. Stat. § 445.901, *et seq.*, including § 445-902(c);

3 (p) Defendants have engaged in unfair competition or unfair or deceptive acts or
4 practices in violation of Minn. Stat. § 325F.67, *et seq.*, including § 407.010(5);

5 (q) Defendants have engaged in unfair competition or unfair or deceptive acts or
6 practices in violation of Vernon's Mo. Rev. Stat. § 407.010, *et seq.*;

7 (r) Defendants have engaged in unfair competition or unfair or deceptive acts or
8 practices in violation of Mont. Code § 30-14-101, *et seq.*, including § 30-14-102(5);

9 (s) Defendants have engaged in unfair competition or unfair or deceptive acts or
10 practices in violation of Neb. Rev. Stat. § 59-1601, *et seq.*, including § 59-160(1);

11 (t) Defendants have engaged in unfair competition or unfair or deceptive acts or
12 practices in violation of Nev. Rev. Stat. § 598.0903, *et seq.*;

13 (u) Defendants have engaged in unfair competition or unfair or deceptive acts or
14 practices in violation of N.H. Rev. Stat. § 358-A:1, *et seq.*, including § 358-A:1(1);

15 (v) Defendants have engaged in unfair competition or unfair or deceptive acts or
16 practices in violation of N.J. Stat. Ann. § 56:8-1, *et seq.*, § 56:8-1(d);

17 (w) Defendants have engaged in unfair competition or unfair or deceptive acts or
18 practices in violation of N.M. Stat. Ann. § 57-12-1, *et seq.*;

19 (x) Defendants have engaged in unfair competition or unfair or deceptive acts or
20 practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.*;

21 (y) Defendants have engaged in unfair competition or unfair or deceptive acts or
22 practices in violation of N.C. Gen. Stat. § 75-1.1, *et seq.*;

23 (z) Defendants have engaged in unfair competition or unfair or deceptive acts or
24 practices in violation of N.D. Cent. Code § 51-15-01, *et seq.*, including § 51-15-01(4);

25 (aa) Defendants have engaged in unfair competition or unfair or deceptive acts or
26 practices in violation of Ohio Rev. Stat. § 1345.01, *et seq.*, including § 1345.01(B);

1 (bb) Defendants have engaged in unfair competition or unfair or deceptive acts or
2 practices or made representations in violation of Okla. Stat. tit. 15 § 751, *et seq.*;

3 (cc) Defendants have engaged in unfair competition or unfair or deceptive acts or
4 practices in violation of Or. Rev. Stat. § 646.605, *et seq.*, including § 646.605(4);

5 (dd) Defendants have engaged in unfair competition or unfair or deceptive acts or
6 practices in violation of 73 Pa. Stat. § 201-1, *et seq.*, including § 201-2(2);

7 (ee) Defendants have engaged in unfair competition or unfair or deceptive acts or
8 practices in violation of R.I. Gen. Laws. § 6-13.1-1, *et seq.*, including § 6-13.1(3);

9 (ff) Defendants have engaged in unfair competition or unfair or deceptive acts or
10 practices in violation of S.C. Code Laws § 39-5-10, *et seq.*, including § 39-5-10(9);

11 (gg) Defendants have engaged in unfair competition or unfair or deceptive acts or
12 practices in violation of S.D. Code Laws § 37-24-1, *et seq.*, including § 37-24-1(8);

13 (hh) Defendants have engaged in unfair competition or unfair or deceptive acts or
14 practices in violation of Tenn. Code § 47-18-101, *et seq.*, including § 47-18-103(9);

15 (ii) Defendants have engaged in unfair competition or unfair or deceptive acts or
16 practices in violation of Tex. Bus. & Com. Code § 17.41, *et seq.*, including § 17.45(4);

17 (jj) Defendants have engaged in unfair competition or unfair or deceptive acts or
18 practices in violation of Utah Code Ann. § 13-11-1, *et seq.*;

19 (kk) Defendants have engaged in unfair competition or unfair or deceptive acts or
20 practices in violation of Va. Code § 59.1-196, *et seq.*, including § 59.1-198;

21 (ll) Defendants have engaged in unfair competition or unfair, deceptive acts or
22 fraudulent acts or practices in violation of Wash. Rev. Code § 19.86.010, *et seq.*, including
23 § 19.86.010(1);

24 (mm) Defendants have engaged in unfair competition or unfair or deceptive acts or
25 practices in violation of W. Va. Code § 46A-6-101, *et seq.*;

26 (nn) Defendants have engaged in unfair competition or unfair or deceptive acts or
27 practices in violation of Wis. Stat. § 100.20, *et seq.*; and
28

516090.1

(oo) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Wyo. Stat. § 40-12-100, *et seq.*, including § 40-12-102(a)(i).

256. Defendants' actions, as complained of herein, constitute unfair competition or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of various state consumer protection statutes that allow consumers to pursue claims. Plaintiffs thus assert this claim on behalf of Class Members in the states identified below and pursuant to the statutes identified below:

(a) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Alaska Stat. Code § 40.50.471, *et seq.*;

(b) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ariz. Rev. Stat. § 44-1522, *et seq.*;

(c) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ark. Code § 4-88-101, *et seq.*;

(d) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* and the Consumer Legal Remedies Act, Civ. Code § 1750 *et seq.* ("CLRA");

(e) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Colo. Rev. Stat. § 6-1-105, *et seq.*;

(f) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Conn. Gen. Stat. § 42-110b, *et seq.*;

(g) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 6 Del. Code § 2511, *et seq.*;

(h) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of D.C. Code § 28-3901, *et seq.*;

(i) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Fla. Stat. § 501.201, *et seq.*;

(j) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Haw. Rev. Stat. § 480, *et seq.*;

(k) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Idaho Code § 48-601, *et seq.*;

(l) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 815 ILCS § 505/1, *et seq.*;

(m) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ind. Code Ann. § 24-5-0.5.1, *et seq.*;

(n) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Kan. Stat. § 50-623, *et seq.*;

(o) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ky. Rev. Stat. § 367.110, *et seq.*;

(p) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 5 Me. Rev. Stat. § 207, *et seq.*;

(q) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Md. Com. Law Code § 13-101, *et seq.*;

(r) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mass. Gen. L. Ch. 93A, *et seq.*;

(s) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mich. Stat. § 445.901, *et seq.*;

(t) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Minn. Stat. § 325F.67, *et seq.*;

(u) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Vernon's Mo. Rev. Stat. § 407.010, *et seq.*;

(v) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mont. Code § 30-14-101, *et seq.*;

1 (w) Defendants have engaged in unfair competition or unfair or deceptive acts or
2 practices in violation of Neb. Rev. Stat. § 59-1601, *et seq.*;

3 (x) Defendants have engaged in unfair competition or unfair or deceptive acts or
4 practices in violation of Nev. Rev. Stat. § 598.0903, *et seq.*;

5 (y) Defendants have engaged in unfair competition or unfair or deceptive acts or
6 practices in violation of N.H. Rev. Stat. § 358-A:1, *et seq.*;

7 (z) Defendants have engaged in unfair competition or unfair or deceptive acts or
8 practices in violation of N.J. Stat. Ann. § 56:8-1, *et seq.*;

9 (aa) Defendants have engaged in unfair competition or unfair or deceptive acts or
10 practices in violation of N.M. Stat. Ann. § 57-12-1, *et seq.*;

11 (bb) Defendants have engaged in unfair competition or unfair or deceptive acts or
12 practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.*;

13 (cc) Defendants have engaged in unfair competition or unfair or deceptive acts or
14 practices in violation of N.C. Gen. Stat. § 75-1.1, *et seq.*;

15 (dd) Defendants have engaged in unfair competition or unfair or deceptive acts or
16 practices in violation of N.D. Cent. Code § 51-15-01, *et seq.*;

17 (ee) Defendants have engaged in unfair competition or unfair or deceptive acts or
18 practices in violation of Ohio Rev. Stat. § 1345.01, *et seq.*;

19 (ff) Defendants have engaged in unfair competition or unfair or deceptive acts or
20 practices or made representations in violation of Okla. Stat. tit. 15 § 751, *et seq.*;

21 (gg) Defendants have engaged in unfair competition or unfair or deceptive acts or
22 practices in violation of Or. Rev. Stat. § 646.605, *et seq.*;

23 (hh) Defendants have engaged in unfair competition or unfair or deceptive acts or
24 practices in violation of 73 Pa. Stat. § 201-1, *et seq.*;

25 (ii) Defendants have engaged in unfair competition or unfair or deceptive acts or
26 practices in violation of R.I. Gen. Laws. § 6-13.1-1, *et seq.*;

(jj) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.C. Code Laws § 39-5-10, *et seq.*;

(kk) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.D. Code Laws § 37-24-1, *et seq.*;

(ll) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Tenn. Code § 47-18-101, *et seq.*;

(mm) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Tex. Bus. & Com. Code § 17.41, *et seq.*;

(nn) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Utah Code Ann. § 13-1 1-1, *et seq.*;

(oo) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Vt. Stat. Ann. tit. 9, § 245 1, *et seq.*;

(pp) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Va. Code § 59.1-196, *et seq.*;

(qq) Defendants have engaged in unfair competition or unfair, deceptive acts or fraudulent acts or practices in violation of Wash. Rev. Code § 19.86.010, *et seq.*;

(rr) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of W. Va. Code § 46A-6-101, *et seq.*;

(ss) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Wis. Stat. § 100.20, *et seq.*; and

(tt) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Wyo. Stat. § 40-12-100, *et seq.*

257. Plaintiffs provided notice of this litigation as follows:

258. In addition, on March 1, 2006, notice was sent to each Attorney General in each of the states requiring notice and where demand on a Defendant is required, such demand was made on March 1, 2006.

1 259. Pursuant to Section 1782 of the CLRA, in conjunction with the filing of this action,
2 Plaintiffs have notified Defendants in writing of the particular violations of Section 1770 of the
3 CLRA (the "Notice") and has demanded that Defendants refund the purchase price of Celebrex.
4 Plaintiffs sent the Notice by certified mail, return-receipt requested to Defendants' registered agent
5 of service/principal place of business in California.

6 260. As a direct, proximate and foreseeable result of Defendants' actions, Plaintiffs and
7 members of the Class paid for higher priced Celebrex instead of purchasing a lower-priced generic
8 and/or a lower priced Celebrex.

9 261. If Plaintiffs and members of the Class had not been deceived concerning the safety
10 and effectiveness of Celebrex, they would have taken steps so as to not purchase Celebrex at the
11 prices set by Defendants. Among the possible steps is to exclude Celebrex from their approved
12 schedules, set a lower scheduled value in the formulary, set a high co-pay obligation, and otherwise
13 dissuade doctors from prescribing Celebrex.

14 262. Defendants' unlawful actions caused the purchase of, or payment for Celebrex by
15 Plaintiffs, and as a result Plaintiffs paid more than they otherwise would have for NSAIDs: had a
16 reasonable Plaintiff known the truth that Defendants misrepresented and concealed that Plaintiffs
17 would have used and/or paid for another less expensive, equally effective, and at least as safe
18 NSAID — many of which were available without a prescription and therefore would not have
19 generated unnecessary physician visits with the unnecessary expense to plaintiffs. Defendants
20 would have lost a sale, and Plaintiffs would have avoided loss.

21 263. Plaintiffs and members of the Class were injured by the cumulative and indivisible
22 nature of Defendants' conduct. The cumulative effect of Defendants' conduct directed at
23 physicians and consumers was to artificially create demand for Celebrex in lieu of other NSAIDs
24 and/or caused Celebrex to command an artificially inflated price. Each aspect of Defendants'
25 conduct combined to artificially create sales of Celebrex and/or to result in overpayments by Class
26 Members.

1 264. As a direct and proximate result of Defendants' unfair methods of competition and
2 unfair or deceptive acts or practices, Plaintiffs and the Class have suffered actual economic damage
3 by paying for Celebrex in lieu of other cheaper drugs and/or to pay at an artificially inflated price.

4 **THIRD CLAIM FOR RELIEF**
5 **(Unjust Enrichment)**

6 265. Plaintiffs incorporate by reference the preceding paragraphs as if they were fully set
7 forth herein.

8 266. To the detriment of Plaintiffs and members of the Class, Defendants have been, and
9 continue to be, unjustly enriched as a result of the unlawful and/or wrongful collection of, inter
10 alia, payments for Celebrex.

11 267. Plaintiffs and members of the Class were injured by the cumulative and indivisible
12 nature of Defendants' conduct. The cumulative effect of Defendants' conduct directed at
13 physicians and consumers was to artificially create demand for Celebrex at an artificially inflated
14 price. Each aspect of Defendants' conduct combined to artificially create sales of Celebrex.

15 268. Defendants have unjustly benefited through the unlawful and/or wrongful collection
16 of, inter alia, payments for Celebrex and continue to so benefit to the detriment and at the expense
17 of Plaintiffs and members of the Class.

18 269. Accordingly, Plaintiffs and members of the Class seek full restitution of the
19 Defendants' enrichment, benefits and ill-gotten gains acquired as a result of the unlawful and/or
20 wrongful conduct alleged herein.

21 **FOURTH CLAIM FOR RELIEF**
22 **(Breach of Implied Warranty)**

23 270. Plaintiffs incorporate by reference the preceding paragraphs as if they were fully set
24 forth herein.

25 271. Defendants are merchants and are in the business of selling selective COX-2
26 inhibitor drugs such as Celebrex.
27
28

1 272. Celebrex was not of merchantable quality and was not fit for its intended use,
2 because it causes increased risk of serious cardiovascular and cerebrovascular adverse events,
3 including heart attacks, strokes and other serious and harmful adverse health effects.

4 273. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
5 fit for such use in violation of Ala. Code § 7-2-314, *et seq.*

6 274. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
7 fit for such use in violation of Alaska St. § 45.02.314, *et seq.*

8 275. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
9 fit for such use in violation of Ariz. Rev. Stat. Ann. § 47-2314, *et seq.*

10 276. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
11 fit for such use in violation of Ark. Code Ann. § 4-2-314, *et seq.*

12 277. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
13 fit for such use in violation of Cal. Comm. Code § 2314, *et seq.*

14 278. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
15 fit for such use in violation of Co. Rev. St. § 4-2-314, *et seq.*

16 279. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
17 fit for such use in violation of Conn. Gen. Stat. Ann. § 42a-2-314, *et seq.*

18 280. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
19 fit for such use in violation of 6 Del. C. § 2-314, *et seq.*

20 281. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
21 fit for such use in violation of D.C. Code Ann. § 28:2-314, *et seq.*

22 282. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
23 fit for such use in violation of Fla. Stat. Ann. § 672.314, *et seq.*

24 283. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
25 fit for such use in violation of Ga. Code Ann. § 11-2-314, *et seq.*

26 284. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
27 fit for such use in violation of Haw. Rev. Stat. § 490:2-314, *et seq.*

28 516090.1

1 285. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
2 fit for such use in violation of Id. Code § 28-314, *et seq.*

3 286. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
4 fit for such use in violation of Ill. Comp. Stat. Ann. Ch. 810, 5/2-314, *et seq.*

5 287. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
6 fit for such use in violation of Indiana Code Ann. § 26-1-2-314, *et seq.*

7 288. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
8 fit for such use in violation of Iowa Code Ann. § 554.2314, *et seq.*

9 289. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
10 fit for such use in violation of Kansas Stat. Ann. § 84-2-314, *et seq.*

11 290. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
12 fit for such use in violation of Ky. Rev. Stat. § 355.2-314, *et seq.*

13 291. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
14 fit for such use in violation of, and is liable in redhibition under, La. Civ. Code Ann. art. 2520, *et*
15 *seq.*

16 292. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
17 fit for such use in violation of 11 Maine Rev. Stat. Ann. § 2-314, *et seq.*

18 293. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
19 fit for such use in violation of Md. Code Ann., Com. Law § 2-314, *et seq.*

20 294. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
21 fit for such use in violation of Mass. Gen. Laws Ann. Ch. 106, § 2-314, *et seq.*

22 295. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
23 fit for such use in violation of Mich. Comp. Laws Ann. § 440.2314, *et seq.*

24 296. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
25 fit for such use in violation of Minn. Stat. Ann. § 336.2-314, *et seq.*

26 297. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
27 fit for such use in violation of Miss. Code Ann. § 75-2-314, *et seq.*

28 516090.1

1 298. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
2 fit for such use in violation of Missouri Rev. Stat. § 400.2-314, *et seq.*

3 299. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
4 fit for such use in violation of Mont. Code Ann. § 30-2-314, *et seq.*

5 300. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
6 fit for such use in violation of Neb. Rev. Stat. U.C.C. § 2-314, *et seq.*

7 301. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
8 fit for such use in violation of Nev. Rev. Stat. U.C.C. § 104.2314, *et seq.*

9 302. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
10 fit for such use in violation of N.H. Rev. Stat. Ann. § 382-A:2-314, *et seq.*

11 303. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
12 fit for such use in violation of N.J. Stat. Ann. § 12A:2-314, *et seq.*

13 304. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
14 fit for such use in violation of N.M. Stat. Ann. § 55-2-314, *et seq.*

15 305. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
16 fit for such use in violation of N.Y. U.C.C. Law § 2-314, *et seq.*

17 306. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
18 fit for such use in violation of N.C. Gen. Stat. Ann. § 25-2-314, *et seq.*

19 307. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
20 fit for such use in violation of N.D. Stat. § 41-02-31, *et seq.*

21 308. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
22 fit for such use in violation of Ohio Rev. Code Ann. § 1302.27, *et seq.*

23 309. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
24 fit for such use in violation of 12A Okla. Stat. § 2-314, *et seq.*

25 310. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
26 fit for such use in violation of Or. Rev. Stat. § 72.3140, *et seq.*

27
28 516090.1

1 311. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
2 fit for such use in violation of 13 Pa. Stat. Ann. § 2314, *et seq.*

3 312. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
4 fit for such use in violation of R.I. Gen. Laws § 6A-2-314, *et seq.*

5 313. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
6 fit for such use in violation of S.C. § 36-2-314, *et seq.*

7 314. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
8 fit for such use in violation of S.D. ST. 857A-2-314, *et seq.*

9 315. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
10 fit for such use in violation of Tenn. Code Ann. § 47-2-314, *et seq.*

11 316. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
12 fit for such use in violation of Tex. Bus. & Com. Code Ann. § 2.314, *et seq.*

13 317. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
14 fit for such use in violation of Ut. Code Ann. § 70A-2-314, *et seq.*

15 318. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
16 fit for such use in violation of Va. Code Ann. § 8.2-314, *et seq.*

17 319. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
18 fit for such use in violation of Vt. Stat. Ann. § 9A-2-314, *et seq.*

19 320. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
20 fit for such use in violation of Wa. Rev. Code § 62A.2-314, *et seq.*

21 321. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
22 fit for such use in violation of W. Va. Code § 46-2-314, *et seq.*

23 322. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
24 fit for such use in violation of Wis. Stat. Ann. § 402.314, *et seq.*

25 323. Pfizer breached its implied warranty that Celebrex was of merchantable quality and
26 fit for such use in violation of Wyo. Stat. § 34.1-2-314, *et seq.*

27

28

516090.1

1 324. As a proximate cause of Pfizer's breach of warranty, Plaintiffs and the Class
2 suffered ascertainable losses, injuries and damages as specified herein in an amount to be
3 determined at trial.

4 325. In marketing and selling Celebrex, Defendants impliedly warranted that Celebrex
5 provided effective pain relief without the gastrointestinal side effects of traditional NSAIDs.

6 326. In marketing and selling Celebrex, Defendants intentionally mislead purchasers to
7 believe, and impliedly warranted, that Celebrex possessed the same cardio-protective properties
8 and skin dangers as traditional NSAIDs.

9 327. In reality, Celebrex failed to provide effective pain relief without the gastrointestinal
10 side effects of traditional NSAIDs. Celebrex also did not possess the same cardio-protective
11 properties and skin dangers as traditional NSAIDs. In fact, Celebrex caused or exacerbated
12 cardiovascular injury far more often than traditional NSAIDs, and even more often than other
13 selective COX-2 inhibitor drugs. Accordingly, for these and other reasons, Celebrex was not fit for
14 the purposes for which it was sold and used, and it does not pass without objection in the trade.

15 328. Defendants did not effectively disclaim or otherwise limit their implied warranty of
16 merchantability with respect to Celebrex. Therefore, Defendants breached the implied warranty of
17 merchantability as to Plaintiffs and each member of the Class.

18 **VII. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray that:

20 A. The Court determine that this action may be maintained as a class action pursuant to
21 Rule 23(b)(2) of the Federal Rules of Civil Procedure with respect to Plaintiffs' claims for
22 declaratory, equitable and injunctive relief, and Rule 23(b)(3) of the Federal Rules of Civil
23 Procedure with respect to the claims for damages, and declaring Plaintiffs as representative of the
24 Class and Plaintiffs' counsel as counsel for the Class; and designating such 23(c)(4)(A) class issues
25 and/or 23 (c)(4)(B) subclasses as appropriate.

26 B. The conduct alleged herein be declared, adjudged and decreed to be unlawful;
27

1 C. Plaintiffs and the Class be granted an award of damages in such amount to be
2 determined at trial, with trebled damages as provided by law;

3 D. Plaintiffs and the Class be granted an award of punitive damages in such amount to
4 be determined at trial;

5 E. Defendants be enjoined from continuing the illegal activities alleged herein;

6 F. Plaintiffs and the Class recover their costs of suit, including reasonable attorneys'
7 fees and expenses as provided by law; and

8 G. Plaintiffs and the Class be granted such other, further, and different relief as the
9 nature of the case may require or as may be determined to be just, equitable, and proper by this
10 Court.

11 VIII. DEMAND FOR JURY TRIAL

12 Plaintiffs demand a jury trial on all issues so triable.

13 DATED: March 1, 2006

14 Respectfully submitted,

15 LIEFF, CABRASER, HEIMANN &
16 BERNSTEIN, LLP

17 By: 

18 Elizabeth J. Cabraser

19 Elizabeth J. Cabraser
20 ecabraser@lchb.com

21 Scott P. Nealey
22 snealey@lchb.com

23 Embarcadero Center West
24 275 Battery Street, 30th Floor
25 San Francisco, CA 94111-3339
26 Telephone: (415) 956-1000
27 Facsimile: (415) 956-1008

28 *Plaintiffs' Liaison Counsel*

HAGENS BERMAN SOBOL SHAPIRO LLP

By /s/ Steve W. Berman

Steve W. Berman

steve@hbsslaw.com

Douglas C. McDermott

doug@hbsslaw.com

1301 Fifth Avenue, Suite 2900

Seattle, WA 98101

Telephone: (206) 623-7292

Facsimile: (206) 623-0594

Thomas M. Sobol

David S. Nalven, DN-2374

HAGENS BERMAN SOBOL SHAPIRO LLP

One Main Street, Fourth Floor

Cambridge, MA 02142

Telephone: 617-482-3700

Facsimile: (617) 482-3003

James R. Dugan, II, T.A. (LSBA No. 24785)

David L. Browne (LSBA No. 20729)

Douglas R. Plymale (LSBA No. 28409)

DUGAN & BROWNE, LLC

650 Poydras Street, Suite 2150

New Orleans, LA 70130

Telephone: (504) 648-0180

Facsimile: (504) 648-0181

Art Sadin

SADIN LAW FIRM, P.C.

1104 S. Friendswood Drive, Suite A

Friendswood, TX 77546

Telephone: (281) 648-7711

Facsimile: (281) 648-7799

Lewis Kahn

KAHN GUATHIER LAW GROUP, L.L.C.

650 Poydras Street, Suite 2150

New Orleans, LA 70130

Telephone: (504) 455-1400

Facsimile: (504) 455-1498

Christopher A. Seeger

SEEGER WEISS, LLP

One William Street

New York, NY 10004-2502

Telephone: (212) 584-0700

Facsimile: (212) 584-0799

516090.1

1 Don Barrett
2 BARRETT LAW OFFICES
3 450 Court Square
4 Lexington, MS 39095-0987
5 Telephone: (662) 834-2376
6 Facsimile: (662) 834-2628

7 Frank M. Pitre
8 COTCHETT, PITRE, SIMON & McCARTHY
9 San Francisco Airport Officer Center
10 840 Malcolm Road, Suite 200
11 Burlingame, CA 94010
12 Telephone: (650) 697-6000
13 Facsimile: (650) 697-0577

14 Leonard Barrack
15 Robert Hoffman
16 Jeffrey Gittleman
17 Chad Carder
18 BARRACK, RODOS & BACINE
19 2001 Market Street
20 3300 Two Commerce Square
21 Philadelphia, PA 19103
22 Telephone: (215) 963-0600
23 Facsimile: (215) 963-0838

24 Howard M. Bushman
25 HARKE & CLASBY LLP
26 155 South Miami Avenue, Suite 600
27 Miami, Florida 33130
28 Telephone: (305) 536-8219
Facsimile: (305) 536-8229

L.S. Charfoos (N.Y Reg #2061406)
Jason J. Thompson (P47184)
Ann K. Mandt (P46314)
CHARFOOS & CHRISTENSEN, P.C.
5510 Woodward Ave.
Detroit, MI 48202
Telephone: (313) 875-8080
Facsimile: (313) 875-8522

Ronald S. Goldser
ZIMMERMAN REED, PLLP
651 Nicollet Mall, Suite 501
Minneapolis, MN 55402
Telephone: (612) 341-0400
Facsimile: (612) 341-0844

516090.1

Jeffrey S. Goddess
ROSENTHAL, MONHAIT, GROSS & GODDESS
919 Market Street, Suite 1401
P.O. Box 1070
Wilmington, DE 19899-1070
Telephone: (302) 656-4433
Facsimile: (302) 658-7567

Richard L. Horwitz
POTTER ANDERSON & CORROON, LLP
1313 N. Market St., Hercules Plaza, 6th Floor
P.O. Box 951
Wilmington, DE 19899-0951
Telephone: (302) 984-6000
Facsimile: (302) 658-1192

Garve W. Ivey, Jr.
Barry A. Ragsdale
William Adair, Jr.
IVEY & RAGSDALE
315 West 19th Street
P. O. Box 1349
Jasper, AL 35502-1349
Telephone: (205) 221-4644
Facsimile: (205) 252-8484

Jonathan B. Lowe
LOWE MOBLEY & LOWE
P. O. Box 576
Haleyville, AL 35575-0576
Telephone: (205) 486-5296
Facsimile: (205) 486-4531

Jeffrey L. Kodroff
SPECTOR, ROSEMAN & KODROFF, PC
1818 Market Street, Suite 2500
Philadelphia, PA 19106
Telephone: (215) 496-0300
Facsimile: (215) 496-6611

Christopher A. Neal
CHRISTOPHER A. NEAL & ASSOCIATES, P.C.
300 Harwood
Bedford, TX 76021
Telephone: (817) 545-6100
Facsimile: (817) 589-2530

Attorneys for the Celebrex Purchaser Plaintiffs